

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 627.

ARY E. ZONNE, APPELLANT,

MINNEAPOLIS SYNDICATE, JOHN DE LAITRE,
TREASURER, AND J. FRANK CONKLIN, ASSISTANT
TREASURER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.

FILED JULY 2, 1910.

(22,248.)

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1 UNITED STATES OF AMERICA:

No. 971.

ARY E. ZONNE, Plaintiff,

vs.

MINNEAPOLIS SYNDICATE, a Corporation; JOHN DE LAITTRE, as Treasurer, and J. Frank Conklin, as Assistant Treasurer, Defendants.

Pleas before the Honorable the Judges of the Circuit Court of the United States of America for the District of Minnesota for the April Term, A. D. 1910, of said Court, held in the city of Minneapolis, in said district, in the year 1910.

DISTRICT OF MINNESOTA, ss:

Be it remembered: That on this 22nd day of June, A. D. 1910 came the plaintiff above named by John R. Van Derlip, his solicitor, and filed in the Clerk's office of said Court his bill of complaint herein, in the words and figures following to wit:—

2 In the Circuit Court of the United States, District of Minnesota, Fourth Division.

ARY E. ZONNE, Plaintiff,

vs.

MINNEAPOLIS SYNDICATE, a Corporation, and JOHN DE LAITTRE, as Treasurer of said Corporation, and J. Frank Conklin, as Assistant-Treasurer of said Corporation, Defendants.

To the Honorable Judges of the Circuit Court of the United States for the District of Minnesota:

Ary E. Zonne, of Minneapolis, Minnesota, a citizen of said state, brings this, his bill of complaint against the Minneapolis Syndicate, a corporation, and John De Laittre, its treasurer, and J. Frank Conklin, its assistant-treasurer, defendants, (each and all of said defendants being of the city of Minneapolis, Minnesota, and citizens of said state of Minnesota), and says:

1. That the plaintiff is, and for many years last past has been, a citizen of the state of Minnesota, and an inhabitant of the city of Minneapolis, in the District of Minnesota, Fourth Division.

2. That defendant Minneapolis Syndicate is a corporation duly created, organized and existing under and by virtue of the General Statutes of the state of Minnesota, and, as such corporation, is entitled to own and hold real property within said state; that the principal place of business of said corporation is, and for many years last past has been, in the city of Minneapolis aforesaid, and that

said corporation now is, and always has been, a citizen of said state of Minnesota, and an inhabitant of said District of Minnesota and the Fourth Division thereof.

3 3. That the defendant John De Laittre, is the duly elected, qualified and acting treasurer of said corporation, and the defendant J. Frank Conklin is the duly elected, qualified and acting assistant treasurer thereof, and that each of said defendants now is, and for many years last past has been, a citizen of said state of Minnesota, and an inhabitant of said District of Minnesota, Fourth Division.

4. That the defendant Minneapolis Syndicate is, and for several years last past has been, the owner in fee of the following described real property situated in said city of Minneapolis, to-wit:

Lots 1, 2, 9 and 10, and the westerly 23 feet, front and rear, of lots 3 and 8, all in Block 87 of the Town of Minneapolis, according to the recorded plats thereof; said described land being and constituting the westerly one-half of said block 87, lying between Nicollet Avenue and the alley running through the center of said block from Fifth Street to Sixth Street in said city of Minneapolis.

That on or about the 27th day of December, 1906, said corporation demised and let all of said tracts, lots and parcels of land to Richards M. Bradley, Arthur Lyman and Russell Tyson, as trustees, for and during the full term of one hundred and thirty (130) years from the first day of January, 1907, to and including the 31st day of December, 2036, at an annual rental of \$61,000.00, to be paid by said lessees to said corporation, lessor.

5. That prior to the making of said lease, said corporation had been engaged in letting stores and offices in a building situated upon said premises, and of collecting and receiving rents therefor, which building was the property of said corporation; that at the time of the execution and delivery of said lease, said corporation sold and conveyed and delivered possession of said building, and has not since owned, or does not now, own, control, occupy or let the same, or any part thereof, and that the entire property now owned by said corporation consists in the above described tracts, lots or parcels

4 of land which have been leased as aforesaid; that after the making of said lease, and by reason thereof, said corporation ceased to do business or to be a corporation organized for profit, and thereupon caused its articles of incorporation to be duly amended in pursuance of the statutes of the state of Minnesota, so that the sole purpose and object of the existence of said corporation became and is as stated in said amended articles of incorporation, to-wit:

"The sole purpose of the corporation shall be to hold the title to the westerly one-half of Block 87 of the Town of Minneapolis, now vested in the corporation, subject to a lease thereof for a term of one hundred and thirty (130) years from January 1, 1907, and, for the convenience of its stockholders, to receive, and to distribute among them, from time to time, the rentals that accrue under said lease, and the proceeds of any disposition of said land."

That the only income of said corporation since the first day of January, 1907, has been the rental paid to it under said lease, and

that said corporation, since said last named date, has engaged in no business of any kind whatsoever, and under its said amended articles of incorporation, said incorporation has no power to engage in any such business.

6. That said defendant corporation has a capital stock of \$1,000,000.00, consisting of 20,000 shares of \$50 each, and that plaintiff now is, and for a long time last past has been, the owner and holder of more than eight hundred (800) of said shares.

7. That prior to the first day of June, 1910, the officers of said corporation, pursuant to the provisions and requirements of Section 38 of the Act of Congress of August 5, 1909, entitled, "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," and under compulsion of the penalties declared by paragraph eighth of said Section 38, made and delivered to the Collector of Internal Revenue for the District of Minnesota, a true and accurate return, under oath of its proper officer, in the form prescribed by the Commissioner of Internal Revenue of the United States, and as required by the provisions of said act of August 5, 1909, said return showing a gross income for the year 1909 of \$61,000 (being the rentals received by said corporation under said lease), and showing also all other matters and things demanded by the said statute and by said Commissioner of Internal Revenue, and showing a net income of about \$60,000.

That said return was so made and delivered by said corporation under compulsion of the penalties declared by said paragraph eighth, and solely to avoid the imposition of such penalties, but under the protest of said corporation against the requirement that such return be made, and against the filing of said return by said Collector, and against the listing of said corporation as liable to payment of the special excise tax attempted to be imposed by said Section 38, as well as against the making of any assessment upon said corporation pursuant to said return, upon the grounds that said act was without the jurisdiction and beyond the power of Congress to enact, and that said corporation is not subject to the tax imposed by said section 38; that said act is unjust and unequal in its operation, and that said act is contrary to the constitution and laws of the United States.

8. That thereafter the Collector of Internal Revenue for the District of Minnesota notified said corporation that a tax had been assessed against it under the provisions of said act of August 5, 1909, in the sum of \$555.00.

9. That, on the 31st day of May, 1910, at a regular meeting of the directors of said corporation, it was moved that the directors, in behalf of the corporation, refuse to pay said tax, and that proper steps be taken to be relieved from said assessment, upon the grounds that the corporation is not one which is subject to said tax under the terms of said act of August 5, 1909, and that the act itself is contrary to the provisions of sections 2, 8 and 9 of Article I of the Constitution of the United States, and of Articles IV and X of the amendments to said Constitution, in that the tax provided for by said act is not

uniform in its operation, and is a direct tax in violation of the constitution and of the rights of the respective states; but said motion

6 was voted down by said board of directors, and thereupon said directors adopted a resolution authorizing and instructing the treasurer of the corporation to pay said tax on or before the 30th day of June, 1910, by the vote of four directors in favor thereof and the vote of one director against said motion; that said treasurer and said assistant-treasurer, in pursuance of said instruction of the board of directors, are about to pay said tax, and that, unless restrained by this court, said corporation, acting through its said officers, will pay said tax, and thereby the funds and assets of said corporation will be unlawfully depleted and the value of the shares of its capital stock will be decreased, and this plaintiff, and other holders of the capital stock of this corporation will be deprived of their property.

10. That this suit arises under Section 38 of said act of August 5, 1909, providing internal revenue for the United States, and under the constitution and laws of the United States, and that this court has jurisdiction hereof.

10-A. That said corporation, the Minneapolis Syndicate, is not a corporation doing business for profit, and does not fall within the terms of said Section 38 of the Act of August 5, 1909, defining corporations subject to pay the annual special excise tax attempted to be created and imposed by said section; and that the income from rentals of real property received by said corporation, and the net amount thereof realized by said corporation, are not, nor is any part of the same, subject to taxation by the United States under said section 38.

11. That said section 38 of said act of August 5, 1909, is in violation of the Constitution of the United States, and invades the rights thereunder of said corporation and of the plaintiff and all other stockholders of said corporation, and that said section is void and of no effect; that the return required to be made under the provisions of said section, and the tax directed to be assessed and collected thereunder are in violation of such rights, and a denial of the protection to which said corporation and its stockholders are entitled under said constitution, and, particularly,

(1) That said excise tax attempted to be authorized by said section is contrary to the provisions of section 2 of Article I of said constitution in that it is a direct tax which is not apportioned among the several states included in the union according to their respective numbers.

(2) That said tax is contrary to the provisions of section 8 of said Article I of said constitution, in that the same will not be uniform throughout the United States.

7 (3) That said tax is contrary to the provisions of section 9 of said Article I of said constitution, in that the same constitutes a direct tax, and one which is not, and does not purport to be, laid in proportion to the census or enumeration of the people of the United States provided for in the constitution.

(4) That said tax is in violation of Article IV of the amendments

to the constitution of the United States, in that it purports to authorize an unreasonable and unlawful investigation of the papers, effects and affairs of said corporation and of its stockholders.

(5) That said tax is not within the powers delegated to the United States by the constitution, but, in effect, is a tax upon rights and franchises created by the state of Minnesota, as respects the parties to this action, and is an infringement upon the rights of said state.

12. That plaintiff has no remedy or protection at law in the premises, and that the payment of said tax by the defendant corporation and its said officers will result in irreparable injury to the plaintiff and to other stockholders of said corporation, and will subject said corporation to a multiplicity of suits, and will deprive said corporation, and each and all of its stockholders, of their property without due process of law, and the property of said corporation will be thereby taken for public use, without compensation, and without the sanction or authority of any valid law, and that said payment of said tax will be made by defendants unless restrained by this court, and that the same would be contrary to equity and good conscience, and would work manifest wrong and injury to the plaintiff.

To the end, therefore, that this plaintiff, and others similarly situated, may have that relief which can only be obtained in a court of equity, and that the defendants may answer the premises (but not upon oath or affirmation, the benefit whereof is hereby expressly waived by plaintiff) plaintiff prays that it be adjudged and decreed that said section 38 of said Act of Congress of August 5, 1909, and each and every of the provisions thereof, are unconstitutional and null, and that said defendants, and each of them, be perpetually restrained from paying said tax, or any tax upon the net income of said corporation for the year 1909, under the provisions of said section 38.

And the plaintiff further prays that the court now grant him a temporary writ of injunction, restraining said defendants and each of them from making any such payment pending the final determination of this cause, and until the final order and decree of this court in the premises, and for such other or different relief as may be equitable in the premises and as to your honors may seem meet.

To the end that plaintiff may obtain the relief to which he is justly entitled in the premises, he now prays the court to grant him due process of subpoena directed to said defendants, requiring and commanding them, and each of them, to appear herein and answer (but not under oath, the same having been hereinbefore expressly waived) the several allegations in this bill, and to observe and abide by such further order, direction and decree herein as may be made by this court, and as shall be agreeable to equity.

Dated, June 21, 1910.

JOHN R. VAN DERLIP,
Solicitor for Plaintiff, 916 Guaranty Building,
Minneapolis, Minn.

BURT F. LUM,
Of Counsel.

- 9 UNITED STATES OF AMERICA,
State of Minnesota, County of Hennepin, ss:

Ary E. Zonne, being first solemnly duly sworn, says that he is the plaintiff in the above entitled action; that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes it to be true.

ARY E. ZONNE.

Subscribed and sworn to before me this 22nd day of June, 1910.
 [L. s.] BERTHA M. PAYNE,

Notary Public, Hennepin County, Minn.

My commission will expire May 10, 1911.

(Endorsed:) Bill of Complaint. Filed June 22, 1910. Henry D. Lang, Clerk, by Geo. F. Hitchcock, Jr., Deputy.

- 10 And on the same day the following præcipe for chancery subpœna was filed of record in said cause, to-wit:

10½ Circuit Court of the United States, District of Minnesota, 4th Division.

ARY E. ZONNE

vs.

MINNEAPOLIS SYNDICATE et al.

The clerk — issue chancery subpœna in above case.

JOHN R. VAN DERLIP,
Solicitor for Plaintiff.

(Endorsed:) Præcipe for Chancery Subpœna. Filed June 22, 1910. Henry D. Lang, Clerk, by Clara M. Owens, Deputy.

- 11 And on the same day the following order for chancery subpœna was entered of record in said cause, to-wit:

12 United States Circuit Court, District of Minnesota, Fourth Division.

Chancery Rule and Order Book.

1910, June 22nd.

ARY E. ZONNE

vs.

MINNEAPOLIS SYNDICATE et al.

The complainant herein having filed a bill of equity in this cause, on application of John R. Van Derlip, Solicitor for said complain-

ant, it is hereby Ordered that a chancery subpoena issue as therein prayed.

13 And on the same day the following chancery subpoena was issued in said cause, and on June 23rd, 1910 was filed of record herein, with admission of service endorsed thereon, which said chancery subpoena and admission of service is in the words and figures following, to-wit:

14 (Original.)

UNITED STATES OF AMERICA,
District of Minnesota, Fourth Division:

The President of the United States of America to Minneapolis Syndicate, a corporation, and John De Laittre, as treasurer of said corporation, and J. Frank Conklin, as assistant treasurer of said corporation, Greeting:

You are hereby commanded to be and appear at Rules, to be held at the office of the clerk of the Circuit Court of the United States, for the District of Minnesota, on the first Monday of August next, at the city of Minneapolis, then and there to answer the Bill of Complaint of Ary E. Zonne, citizen of the State of Minnesota, filed against you on the 22nd day of June A. D. 1910; hence fail not.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 22d day of June, 1910. Issued at my office in the City of Minneapolis, under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL.]

HENRY D. LANG, *Clerk*,
By CLARA M. OWENS, *Deputy*.

MEMORANDUM.—The above named defendants to enter their appearance in this suit in the clerk's office aforesaid, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

HENRY D. LANG, *Clerk*,
By CLARA M. OWENS, *Deputy*.

VER DERLIP & LUM,
Complainant's Solicitors.

(Endorsed:) No. 971. United States Circuit Court, District of Minnesota, Fourth Division. Ary E. Zonne, Plaintiff, vs. Minneapolis Syndicate, a corporation, and John De Laittre, and J. Frank Conklin, Defendants. Chancery Subpoena. (Original.) Returnable to August Rules, 1910. Returned into the Clerk's Office and filed this 23rd day of June A. D. 1910. Henry D. Lang, Clerk, by Geo. F. Hitchcock, Jr., Deputy. Van Derlip & Lum, Complainant's Solicitors.

Due and proper service of within subpoena is hereby accepted and admitted on the part of all the within named defendants this 23rd day of June, 1910.

SNYDER & GALE,
*Att'ys and Solicitors for Def'ts, Minneapolis Syndicate,
John De Laittre, Treasurer; J. Frank Conklin, Ass't
Treasurer, 800-6 Security Bank Bldg., Minneapolis
Minn.*

15 And on June 23rd, 1910 the following præcipe for appearance was filed of record in said cause to-wit:

15½ Circuit Court of the United States, District of Minnesota,
Fourth Division.

ARY E. ZONNE, Plaintiff,
vs.

MINNEAPOLIS SYNDICATE, a Corporation; JOHN DE LAITTRE, as
Treasurer, and J. Frank Conklin, as Assistant Treasurer, De-
fendants.

Appearance.

The Clerk will enter our appearance for each and all of the defendants above named.

June 23d, 1910.

SNYDER & GALE,
Solicitors, 810 Security Bank Building, Minneapolis, Minn.

(Endorsed:) Præcipe for appearance of all defendants. Filed June 23, 1910. Henry D. Lang, Clerk, by Clara M. Owens, Deputy.

(Endorsed:) No. 971. United States Circuit Court, District of Minnesota, 4th Division. Ary E. Zonne vs. Minneapolis Syndicate et al. Appearance for all Def'ts. Snyder & Gale, 810 Sec. Bk. Bldg., Minneapolis. Filed June 23d, 1910. Henry D. Lang, Clerk, by Clara M. Owens, Deputy.

16 And on the same day the following appearance was entered of record in said cause, to-wit:

7 United States Circuit Court, District of Minnesota, Fourth Division.

Chancery Rule and Order Book.

1910, June 23rd.

ARY E. ZONNE

vs.

MINNEAPOLIS SYNDICATE et al.

This day come the defendants by Snyder & Gale their solicitors, whose motion it is hereby Ordered that the appearance of said defendants be and the same hereby is entered.

8 And on the same day the following demurrer to the bill of complaint was filed of record in said cause, to-wit:

9 In Circuit Court of the United States, District of Minnesota, Fourth Division.

ARY E. ZONNE, Plaintiff,

vs.

MINNEAPOLIS SYNDICATE, a Corporation, and JOHN DE LAITRE, as Treasurer of said Corporation, and J. Frank Conklin, as Assistant-Treasurer of said Corporation, Defendants.

The defendants above named, by protestation, not confessing or acknowledging all or any of the matters and things in the bill of complaint of Ary E. Zonne, plaintiff in the above entitled suit to be true in such manner and form as the same are therein and hereby set forth and alleged, demur to the said bill, and for cause of demurrer show, that it appears on the face of said bill of complaint that the complainant is not entitled to the relief prayed for in said bill, or in any part thereof, but that the Act of August 5, 1909, set forth in said bill of complaint, is in all respects constitutional and valid.

Wherefore, these defendants demur to said bill, and to all matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer thereto, and pray to be dismissed, with their reasonable costs in this behalf sustained.

SNYDER & GALE,
Solicitors for Defendants.

I certify that in my belief the foregoing demurrer of the defendants above named to the bill of complaint of A. E. Zonne is well founded in law and proper to be filed in the above cause.

FRED. B. SNYDER,
Solicitor for Defendants.

We hereby waive costs on demurrer, if demurrer be sustained.

SNYDER & GALE,
Solicitors for Defendants.

20 UNITED STATES OF AMERICA,
State of Minnesota, County of Hennepin, ss:

J. Frank Conklin, one of the above named defendants, on oath says that he has read the foregoing demurrer to the bill of complaint of Ary E. Zonne in this suit, and that the same is not interposed for the purpose of delaying said suit or other proceedings therein.

J. FRANK CONKLIN.

Subscribed and sworn to before me this 22nd day of June, 1910.

[L. s.]

BERTHA M. PAYNE,

Notary Public, Hennepin County, Minn.

My commission will expire May 10, 1911.

(Endorsed:) Demurrer of Defendants. Filed June 23, 1910.
Henry D. Lang, Clerk, by Clara M. Owens, Deputy.

21 And on the same day the following order sustaining defendants' demurrer to the bill of complaint was filed and entered of record in said cause, to-wit:

22 In Circuit Court of the United States, District of Minnesota,
Fourth Division.

ARY E. ZONNE, Plaintiff,

vs.

MINNEAPOLIS SYNDICATE, a Corporation; JOHN DE LAITRE, as Treasurer of said Corporation, and J. Frank Conklin, as Assistant-Treasurer of said Corporation, Defendants.

This matter came on for hearing before the court on the demurrer of the defendants to the bill of complaint of the plaintiff, Fred B. Snyder, Esq. appearing as solicitor for the defendants in support of said demurrer, and Van Derlip & Lum appearing as solicitor for the plaintiff in opposition thereto. The court having heard counsel, and after due consideration of the matter,

It is ordered that said demurrer be, and the same is hereby, sustained; and the plaintiff having declined in open court to amend his complaint or to re-plead, it is ordered that a decree be entered in this cause dismissing said bill of complaint on the merits without costs, costs having been expressly waived by the defendants.

Dated, Minneapolis, Minnesota, June 23d, 1910.

CHARLES A. WILLARD, *Judge.*

(Endorsed:) Order Sustaining Demurrer. Filed June 23, 1910.
Henry D. Lang, Clerk, by Clara M. Owens, Deputy.

23 And on the same day the following decree dismissing the bill of complaint was filed and entered of record in said cause, to-wit:

24 In Circuit Court of the United States, District of Minnesota, Fourth Division.

ARY E. ZONNE, Plaintiff,

vs.

MINNEAPOLIS SYNDICATE, a Corporation, and JOHN DE LAITRE, as Treasurer of said Corporation, and J. Frank Conklin, as Assistant-Treasurer of said Corporation, Defendants.

This case having come on to be heard this 23rd day of June, 1910, upon the demurrer of the defendants to the bill of complaint of the plaintiff, and the court having considered said demurrer, and having sustained the same, and the plaintiff having declined to amend his complaint or to re-plead, and the defendants having expressly waived costs,—

It is adjudged and decreed that the said bill of complaint be, and the same hereby is, dismissed upon the merits, without costs.

CHARLES A. WILLARD, *Judge*.

(Endorsed:) Decree. Filed June 23, 1910. Henry D. Lang, Clerk, by Geo. F. Hitchcock, Jr., Deputy.

25 And on June 25th, 1910 the following papers on appeal were filed of record in said cause to-wit: Assignment of errors; notice of appeal and allowance thereof; bond on appeal with approval endorsed thereon; citation with admission of service thereon.

26 In Circuit Court of the United States, District of Minnesota, Fourth Division.

ARY E. ZONNE, Plaintiff,

vs.

MINNEAPOLIS SYNDICATE, a Corporation, and JOHN DE LAITRE, as Treasurer of said Corporation, and J. Frank Conklin, as Assistant-Treasurer of said Corporation, Defendants.

The above named plaintiff, by John R. Van Derlip, his solicitor, says that the decree in the above entitled cause entered on the 23rd day of June, 1910, is erroneous and against the just rights of said plaintiff, and that the demurrer of the defendants to the bill of complaint in said cause should have been overruled, for the reasons:

First. That Section 38 of the Act of Congress of August 5, 1909, is unconstitutional and void, for the reasons set forth in the bill of complaint;

Second. That if said section be constitutional and valid, the de-

fendant corporation, Minneapolis Syndicate, is not subject to the tax imposed thereby.

Wherefore, the plaintiff prays that said decree be reversed, and that said court be directed to overrule said demurrer, and, unless some good defense be interposed thereto, to enter a decree in accordance with the prayer of said bill.

JOHN R. VAN DERLIP,
*Solicitor for Plaintiff, 916 Guaranty Building,
Minneapolis, Minn.*

(Endorsed:) Assignment of Errors. Filed June 25, 1910.
Henry D. Lang, Clerk, by Geo. F. Hitchcock, Jr., Deputy.

27 In Circuit Court of the United States, District of Minnesota,
Fourth Division.

ARY E. ZONNE, Plaintiff,
vs.

MINNEAPOLIS SYNDICATE, a Corporation, and JOHN DE LAITRE, as
Treasurer of said Corporation, and J. Frank Conklin, as Assistant-
Treasurer of said Corporation, Defendants.

The above named plaintiff conceiving himself aggrieved by the decree made and entered on the 23rd day of June, 1910, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, June 23, 1910.

JOHN R. VAN DERLIP,
*Solicitor for Plaintiff, 916 Guaranty Building,
Minneapolis, Minn.*

B. F. LUM,
Of Counsel.

The foregoing appeal is hereby allowed.

Dated, June 24, 1910.

CHARLES A. WILLARD,
District Judge for the District of Minnesota.

(Endorsed:) Notice of Appeal. Filed June 25, 1910. Henry D. Lang, Clerk, by Geo. F. Hitchcock, Jr., Deputy.

28 In Circuit Court of the United States, District of Minnesota,
Fourth Division.

ARY E. ZONNE, Plaintiff,

vs.

MINNEAPOLIS SYNDICATE, a Corporation, and JOHN DE LAITTRE, as
Treasurer of said Corporation, and J. Frank Conklin, as Assistant-
Treasurer of said Corporation, Defendants.

Know all men by these presents, that Ary E. Zonne, as principal, and Clinton Morrison and Merrill Bartlett, of Minneapolis, Minnesota, as sureties, are held and firmly bound unto the above named defendants in the full and just sum of five hundred (\$500) dollars, to be paid to said defendants, their successors, executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of June, 1910.

The condition of this obligation is such that, whereas, on the 23rd day of June, 1910, a decree was rendered in the above entitled action against the above named plaintiff and in favor of the above named defendants, dismissing the bill of complaint upon the merits, and said plaintiff having taken and had allowed an appeal therefrom, and having filed a copy thereof in the clerk's office of said court, to reverse the said decree, and a citation directed to the said defendants citing and admonishing them to be and appear in the Supreme Court of the United States in the city of Washington, in the District of Columbia, within 30 days after the 25th day of June, 1910, having been issued;

In case said Ary E. Zonne shall prosecute said appeal to effect and answer all costs, if he shall fail to make the said plea good, then the above obligation to be void, otherwise to remain in full force and effect.

ARY E. ZONNE. [SEAL.]
CLINTON MORRISON. [SEAL.]
MERRILL BARTLETT. [SEAL.]

Signed, sealed and delivered in presence of
BERTHA M. PAYNE.
K. CLEMENSSON.

29 STATE OF MINNESOTA.
County of Hennepin, ss:

Clinton Morrison and Merrill Bartlett, being severally duly sworn, each for himself says that he is a resident and freeholder of the city of Minneapolis in said county and state, and is worth the sum of one thousand (\$1000) dollars over and above all his debts and liabilities in property not exempt from execution.

CLINTON MORRISON.
MERRILL BARTLETT.

Subscribed and sworn to before me this 24th day of June, 1910.

[L. s.]

BERTHA M. PAYNE,
Notary Public, Hennepin Co., Minn.

My commission will expire May 10, 1911.

STATE OF MINNESOTA,

County of Hennepin, ss:

On this 24th day of June, 1910, before me, a notary public within and for said county, personally appeared Ary E. Zonne, Clinton Morrison and Merrill Bartlett, to me known to be the same persons described in and who executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed.

[L. s.]

BERTHA M. PAYNE,
Notary Public, Hennepin Co., Minn.

My commission will expire May 10, 1911.

(Endorsed:) Bond on Appeal. The within Bond is hereby approved this 25th day of June, 1910. Filed June 25, 1910. Henry D. Lang, Clerk, by Geo. F. Hitchcock, Jr., Deputy.

30

In Supreme Court of the United States.

ARY E. ZONNE, Appellant,

vs.

MINNEAPOLIS SYNDICATE, a Corporation, and JOHN DE LAITTE, as Treasurer of said Corporation, and J. Frank Conklin, as Assistant-Treasurer of said Corporation, Appellees.

UNITED STATES OF AMERICA:

To Minneapolis Syndicate, a corporation, and John De Laitte, as treasurer of said corporation, and J. Frank Conklin, as assistant-treasurer of said corporation:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States within thirty (30) days after the date of this citation, pursuant to an appeal in the above entitled cause duly allowed and filed in the clerk's office of the Circuit Court of the United States for the District of Minnesota, Fourth Division, wherein Ary E. Zonne is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said bill mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25th day of June, 1910.

CHARLES A. WILLARD, Judge.

Due personal service of the foregoing citation, on behalf of all of the appellees named therein, is hereby admitted and accepted this 25th day of June, 1910.

SNYDER & GALE,
Solicitors for Appellees,
800-6 Security Bank Bldg., Minneapolis.

30½ End.: No. 971. Original. United States Supreme Court.
Ary E. Zonne, Appellant, vs. Minneapolis Syndicate et al.,
Appellees. Citation. Filed June 25, 1910. Henry D. Lang, Clerk,
by Geo. F. Hitchcock, Jr., Deputy.

31 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Fourth
Division.

I, Henry D. Lang, Clerk of said Circuit Court, do hereby certify and return to the Honorable The Supreme Court of the United States, that the foregoing, consisting of 31 pages numbered consecutively from 1 to 31 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Minneapolis, in the District of Minnesota, this 25th day of June, A. D. 1910.

[U. S. Circuit Court Seal, Dist. of Minnesota,
Fourth Division.]

HENRY D. LANG, *Clerk,*
By GEO. F. HITCHCOCK, JR., *Deputy.*

[Endorsed:] No. 971. United States Circuit Court, District of Minnesota, 4th Division. Ary E. Zonne vs. Minneapolis Syndicate et al., Defendants. Return to Supreme Court on Appeal.

Endorsed on cover: File No. 22,248. Minnesota C. C. U. S. Term No. 627. Ary E. Zonne, appellant, vs. Minneapolis Syndicate, John De Laitre, treasurer, and J. Frank Conklin, assistant treasurer. Filed July 2, 1910. File No. 22,248.







Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 627.

ARY E. ZONNE,

Appellant,

VS.

MINNEAPOLIS SYNDICATE ET AL.,

Appellees.

APPEAL FROM CIRCUIT COURT OF THE UNITED
STATES FOR THE DISTRICT OF MINNESOTA.

Motion to Advance.

TO THE HONORABLE THE CHIEF JUSTICE AND THE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF
THE UNITED STATES:

The appellant above named hereby respectfully prays that the above entitled cause may be advanced upon the docket of this court, and set down for oral argument, or for submission upon briefs, in connection with the other causes now pending in this court involving the constitutionality of the corporation tax law of August 5, 1909, and the application of said law.

I.

The case of *Flint v. Stone-Tracy Company*, and numerous other cases, were heard by this court in March, 1910, and were subsequently ordered for re-argument. While all those cases involve the constitutionality of the law, none of them presents the peculiar situation out of which the case of this appellant arises. It is desirable that, in the consideration of the act, both in respect of its validity and of the scope of its application, all possible phases should be before the court, in order that its character and effect may be fully disclosed.

II.

Under compulsion of the excessive penalties prescribed by the law, the corporation made a return of its net income and filed the same, with written protest against the requirement that it should do. The Commissioner of Internal Revenue having made an assessment against the corporation, its board of directors voted to pay the tax so assessed, and this action was brought to restrain the corporation and its officers from making such payment, upon the grounds that the act is unconstitutional and invalid, and that, if it be enforceable, the corporation is not subject to its exactions. To the bill of complaint the defendants therein named demurred, and, the demurrer having been sustained by the Circuit Court, the plaintiff declined to re-plead, and thereupon a final judgment upon the merits, dismissing the suit, was made and entered, and an appeal therefrom was allowed directly to this court.

III.

The appellee corporation in this case is one of a considerable class of corporations owning properties of large value. It exists for the sole purpose of holding title to certain real estate which has been leased for a long period of years, so that the corporation has no possession or use of, or control over, the property which is its only asset. It is a corporation which the appellant claims is not *organized for profit*, but which the Commissioner of Internal Revenue insists is subject to the tax as a corporation organized for profit. The important question is, therefore, presented in this case, *What is a corporation organized for profit, within the meaning of the Act of August 5, 1909?*

IV.

By its articles of incorporation (or charter), the appellee corporation has no authority to engage in any business, and is not engaged in any business, but simply holds title to the property, and, for the convenience of its stockholders, receives the rents paid under the lease of its land and distributes the same to its stockholders. The appellant claims that the corporation is not one "carrying on or doing business," and is not embraced within the class of tax-paying corporations created by the Act of August 5th. The Internal Revenue Department holds that it is subject to taxation under said act, and this case presents for determination the further question, *What constitutes "carrying on or doing business," under the provisions of the law?*

V.

It is obvious, we think, that the questions presented by this record, if considered by the court in connection with the pending causes affecting the validity and scope of the corporation tax law, may seriously influence the determination of this Court; and unless they are now given consideration a decision may be rendered which, relating only to the phases disclosed to the court by the other cases, may so far fail to exhaust the character of the act as to leave open to doubt its application to corporations similar to the appellee, and thereby embarrass the officials of the Internal Revenue Department and the officers of such corporations, and result in future litigation, expense and annoyance, which may be avoided by a consideration of this case in connection with the other corporation tax suits.

VI.

It is realized that counsel in the earlier cases are entitled to be heard orally upon the re-argument of their causes, and, for that reason, the appellant will be content to be permitted to submit this appeal upon printed brief, if the time and convenience of the Court render such submission necessary.

Notice of this motion has been served on counsel for the appellees, and proof of service thereof has been filed with the clerk of this court. Similar notice has been given to the Attorney General and to the Solicitor General.

Respectfully submitted,

JOHN R. VAN DERLIP,
Solicitor for Appellant.

August 27, 1910.

